Supreme Court, U.S.
FILED

98 978 DEC 15 1998

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JOAN BRAY,

Petitioner,

vs.

SHRINK MISSOURI GOVERNMENT PAC, a political action committee, and ZEV DAVID FREDMAN

-and-

RICHARD ADAMS, PATRICIA FLOOD, ROBERT GARDNER, DONALD GANN, MICHAEL GREENWELL, and ELAINE SPIELBUSCH, members of the Missouri Ethics Commission; JEREMIAH W. NIXON, Attorney General of Missouri; and ROBERT P. McCULLOUGH, St. Louis County Prosecuting Attorney,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

BURT NEUBORNE
Counsel of Record
NANCY NORTHUP
ELIZABETH DANIEL
BRENNAN CENTER FOR JUSTICE
at New York University School of Law
Attorneys for Petitioner
161 Avenue of the Americas, Fifth Floor
New York, New York 10013
(212) 998-6730

30 pp

QUESTIONS PRESENTED

1. Whether, consistent with the First Amendment as construed in *Buckley v. Valeo*, 424 U.S. 1 (1976), which upheld the $1,000 federal campaign contribution limits still in effect today, a state may impose contribution limits for state and local candidates ranging up to $1,075.

2. Whether the analytic structure undergirding *Buckley v. Valeo*, 424 U.S. 1 (1976), has become so confused and unwieldy as to call for reconsideration of the relationship between the First Amendment and content-neutral efforts to regulate the financing of political campaigns.

3. Whether a federal court errs in striking down as unconstitutional, without trial, a state's campaign contribution limits, where the legislature enacted the limits after hearings and deliberation in order to balance the need to raise money to run effective campaigns with the potential and appearance that contributions were buying influence with legislators, and where 74% of the electorate manifested concern over the appearance of corruption in its approval of an initiative that established even lower contribution limits than those at issue here.

PARTIES TO THE PROCEEDING

All of the parties to this proceeding are listed in the caption. Pursuant to Fed. R. App. P. 43(a)(1), Donald Gann and Michael Greenwell, newly appointed members of the Missouri Ethics Commission, are substituted for their predecessors, Ervin Harder and John Howald.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Cited Authorities	v
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	3
A. Statutory Background	6
B. Proceedings Below	7
1. District Court	7
2. Court of Appeals	8
Reasons for Granting the Writ	10
I. The Eighth Circuit's Summary Invalidation Of Missouri's Campaign Contribution Limits Ranging Up To $1,075 Is A Flat Rejection Of This Court's Decision In *Buckley v. Valeo* Approving The Federal $1,000 Limits And Holding That	

Contents

		Page
	Combating The Perception Of Corruption Is A Sufficient Governmental Interest for Imposing Contribution Limits.	10
II.	The Lower Courts Are Divided On How To Apply *Buckley* In Evaluating Contribution Limits; Without Guidance, The Validity Of Scores Of Longstanding State And Local Contribution Limits, And The 24-Year-Old Federal Limits, Will Be Uncertain, Jeopardizing The Stability Of Numerous Campaign Finance Regimes.	13
	A. The Circuits Are Split on the Appropriate Standard of Review for Evaluating First Amendment Challenges to Contribution Limits.	15
	B. The Lower Courts Are Divided on How a State May Establish Its Interests in Combating the Appearance and Reality of Corruption.	17
	C. Lower Courts Are Divided on How to Determine When Contribution Limits Are "Different in Kind" from the $1,000 Limits Upheld in *Buckley*.	21
Conclusion		25

TABLE OF CITED AUTHORITIES

Page

Cases:

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) 18

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

California Medical Ass'n v. FEC, 453 U.S. 182 (1981) 16

California ProLife Council Political Action Comm. v. Scully, 989 F. Supp. 1282 (E.D. Cal. 1998), *appeal docketed*, No. 98-15308 (9th Cir. Feb. 3, 1998) 14, 20, 23

Carver v. Nixon, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (1996) 6, 14, 16, 23

Colorado Republican Federal Campaign Comm. v. FEC, 518 U.S. 604 (1996) 10, 17

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994) 23

FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) 16

FEC v. National Right to Work Comm., 459 U.S. 197 (1982) 21

Kentucky Right to Life, Inc. v. Terry, 108 F.3d 637 (6th Cir), *cert. denied*, 118 S. Ct. 162 (1977) 5, 13, 14, 17, 19, 22

Cited Authorities

Page

Kusper v. Pontikes, 414 U.S. 51 (1973) 22

Montana Right to Life Ass'n v. Eddleman, 999 F. Supp. 1380 (D. Mont. 1998) 19

Munro v. Socialist Workers Party, 479 U.S. 189 (1986) 20, 21

National Black Police Ass'n v. District of Columbia Bd. of Elections and Ethics, 924 F. Supp. 270 (D.D.C. 1996), *vacated as moot*, 108 F.3d 346 (D.C. Cir. 1997) 14

Pacific Gas & Elec. Co. v. Public Util. Comm'n, 475 U.S. 1 (1986) 16

Rosario v. Rockefeller, 410 U.S. 752 (1973) 22

Russell v. Burris, 978 F. Supp. 1211 (E.D. Ark. 1997), *rev'd on other grounds*, 146 F.3d 563 (8th Cir.), *cert. denied*, 67 U.S.L.W. 3177 (U.S. Nov. 16, 1998) 23, 24

Russell v. Burris, 146 F.3d 563 (8th Cir.), *cert. denied*, 67 U.S.L.W. 3177 (U.S. Nov. 16, 1998) 9, 11, 12, 14, 16, 19, 23, 24

Service Employees Int'l Union v. Fair Political Practices Comm'n, 955 F.2d 1312 (9th Cir. 1992) 16

Timmons v. Twin Cities Area New Party, 117 S. Ct. 1364 (1997) 20

Cited Authorities

	Page
United States v. National Treasury Employees Union, 513 U.S. 454 (1995)	20
Vannatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), *petition for cert. filed*, 67 U.S.L.W. 3348 (U.S. Nov. 10, 1998) (No. 98-775)	16
Constitution and Statutes:	
U.S. Const. Amend. I	i, 1, 5, 15, 24
2 U.S.C. § 441a	4
28 U.S.C § 1254(1)	1
Mo. Ann. Stat. § 130.032	2
Mo. Ann. Stat. § 130.032.1	6
Mo. Ann. Stat. § 130.032.2	6
Mo. Ann. Stat. § 130.032.3	6
Mo. Ann. Stat. § 130.052	3

Page

Other Authorities:

William J. Connolly, Note, *How Low Can You Go? State Campaign Contribution Limits and the First Amendment*, 76 B.U. L Rev. 483 (1996) 23

Craig M. Engle, *et al.*, *Buckley Over Time: A New Problem with Old Contribution Limits*, 24 J. Legis. 207 (1998) 23

APPENDIX

Petitioner Bray adopts by reference and with permission the Appendix contained in the Petition for Writ of Certiorari filed by petitioners Jeremiah W.(Jay) Nixon, Richard Adams, Patricia Flood, Robert Gardner, Donald Gann, Michael Greenwell, Elaine Spielbusch, and Robert McCulloch. *See Nixon v. Shrink Missouri Government PAC,* Petition for Cert. (filed December 14, 1998).

Petitioner Joan Bray, a Missouri State Representative, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.[1]

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit, filed November 30, 1998, has not yet been reported (Appendix ("App.") 1a-19a).[2] The court of appeals' order, dated July 23, 1998, entering an injunction pending appeal is reported at 151 F.3d 763 (8th Cir. 1998) (App. 20a-23a). The opinion of the district court, granting summary judgment to the State[3], dated May 12, 1998, is reported at 5 F. Supp. 2d 734 (E.D. Mo. 1998). (App. 24a-41a).

STATEMENT OF JURISDICTION

The Eighth Circuit's opinion was entered on November 30, 1998. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

1. The Eighth Circuit granted Representative Bray's motion to intervene on August 3, 1998.

2. Petitioner Bray adopts by reference and with permission the Appendix contained in the Petition for Writ of Certiorari filed by petitioners Jeremiah W.(Jay) Nixon, Richard Adams, Patricia Flood, Robert Gardner, Donald Gann, Michael Greenwell, Elaine Spielbusch, and Robert McCulloch. *See Nixon v. Shrink Missouri Government PAC*, Petition for Cert. (filed December 14, 1998).

3. The defendants in this action below, members of the Missouri Ethics Commission, the Missouri Attorney General, and the Prosecuting Attorney for St. Louis County are referred to as the "state" throughout the petition.

the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

MISSOURI STAT. § 130.032

1. [T]he amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

(1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, one thousand dollars;

(2) To elect an individual to the office of state senator, five hundred dollars;

(3) To elect an individual to the office of state representative, two hundred fifty dollars;

(4) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is under one hundred thousand, two hundred fifty dollars;

(5) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least one hundred thousand but less than two hundred fifty thousand, five hundred dollars; and

(6) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least two hundred fifty thousand, one thousand dollars.

2. For purposes of this subsection "base year amount" shall be the contribution limits prescribed in this section on January 1, 1995. Such limits shall be increased on the first day of January in

each even-numbered year by multiplying the base year amount by the cumulative consumer price index, as defined in section 104.010, and rounded to the nearest twenty-five-dollar amount, for all years since January 1, 1995.

3. Candidate committees, exploratory committees, campaign committees and continuing committees, other than those continuing committees which are political party committees, shall be subject to the limits prescribed in subsection 1 of this section. The provisions of this subsection shall not limit the amount of contributions which may be accumulated by a candidate committee and used for expenditures to further the nomination or election of the candidate who controls such candidate committee, except as provided in section 130.052.

* * *

7. Any committee which accepts or gives contributions other those allowed shall be subject to a surcharge of one thousand dollars plus an amount equal to the contribution per nonallowable contribution, to be paid to the ethics commission and which shall be transferred to the director of revenue, upon notification of such nonallowable contribution by the ethics commission, and after the candidate has ten business days after receipt of notice to return the contribution to the contributor. The candidate and the candidate committee treasurer or deputy treasurer owing a surcharge shall be personally liable for the payment of the surcharge or may pay such surcharge only from campaign funds existing on the date of receipt of notice. Such surcharge shall constitute a debt to the state enforceable under, but not limited to, the provisions of chapter 143.

STATEMENT OF THE CASE

For the first time in the 22 years since *Buckley v. Valeo,* 424 U.S. 1 (1976), was decided, this Court is presented with a decision invalidating a campaign contribution limit higher than the $1,000 limit upheld in *Buckley* and still in effect today for all federal

elections. By summarily striking a contribution limit of $1,075, the Eighth Circuit has put into question the constitutionality of the $1,000 campaign contribution limits contained in the Federal Election Campaign Act, 2 U.S.C. § 441a, as well as the limits in most states.[4] Thus, the decision below raises issues of profound importance to the coherent functioning of the electoral process by throwing into uncertainty the basic standard by which many campaign finance laws were drafted.

This case demonstrates the need for clarification and, perhaps, reconsideration of the analytic structure adopted by the Court in *Buckley* to govern the sensitive relationship between the First Amendment and efforts to regulate the financing of political campaigns. In the court below, three distinguished appellate judges, confronted by an uncomplicated case that appears to be squarely governed by this Court's holding in *Buckley,* reached three very different results. Judge John R. Gibson, in dissent, found that Missouri's effort to impose a ceiling of $1,075 on campaign contributions to candidates for statewide office was governed by this Court's decision in *Buckley* upholding a limit of $1,000 on contributions to Presidential and other federal campaigns. Accordingly, he voted to affirm the judgment of the district court upholding the constitutionality of the contribution limits. (App. 10a) (Gibson, J., dissenting).

Chief Judge Bowman, joined by Judge Ross, ruled that, under *Buckley*, Missouri was obliged to provide "demonstrable evidence" of "genuine problems" caused by large campaign contributions before imposing a limit on the size of campaign contributions. (App. 5a). The fact that an appearance of corruption existed in 1972 in connection with federal campaigns did not, ruled the panel majority, provide any justification for contemporary regulatory activity by Missouri. (App. 6a). Evidence that the legislative

---

4. Thirty-five states and many cities have enacted contribution limits near or below the federal level. The petition for writ of certiorari submitted by the state summarizes these statutes and their subsequent history. (App. 42a-44a) (listing state and city contribution limits).

committee that drafted the limits viewed them necessary to combat "the appearance of buying votes" was rejected by the panel majority as not even establishing a material question of fact on the issue of the appearance of corruption. (App. 6a-7a). Accordingly, the panel majority reversed the district court and granted summary judgment for plaintiffs, invalidating the contribution limits. (App. 9a).

Judge Ross refused, however, to join the portion of Chief Judge Bowman's decision in which he found that inflation had eroded the real dollar value of the $1,000 federal contribution limits upheld in *Buckley*. (App. 9a-10a) (Ross, J., concurring).

It is no coincidence that three distinguished appellate judges, confronted by a case governed by a settled point of law that appears to have been resolved by the Court's decision in *Buckley*, vigorously disagree about what *Buckley* requires. The sheer length and complexity of the *Buckley* opinion; its ambiguous treatment of important issues such as the allocation and size of the burdens of justification; its unrelenting equation of speech and money; its highly controversial distinction between contributions and expenditures; its ambivalent treatment of the government's important interest in promoting political equality; and its highly checkered history as an effective precedent have led to massive confusion and uncertainty in the courts, the legislatures, the administrative agencies, the political world, and the citizenry. Unless this Court clarifies the First Amendment analysis governing efforts to regulate campaign financing, confusion will continue to be the principal attribute of the law of campaign financing.

The decision of the panel majority below, granting summary judgment to Shrink Missouri Government PAC, decides a crucial question of First Amendment law — the constitutionality of $1,000 limits on campaign contributions — in a way that appears to be in direct conflict with this Court's decision in *Buckley*, and with the law of one other circuit. *Compare* App. 1a-19 *with Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir), *cert. denied*, 118 S. Ct. 162 (1997). As the district court and the dissent below

recognized, the panel's decision is nothing less than an attempt to overturn *Buckley* from below. (App. 34a) (district court opinion) ("Plaintiffs appear to be implying that the Supreme Court's decision in *Buckley* no longer sits on a firm foundation."); (App. 19a) (Gibson, J. dissenting) ("Perhaps members of the Court quarrel . . . with *Buckley* itself . . . ."). This petition respectfully requests the Court to exercise its certiorari jurisdiction in order to clarify, reconsider, or reaffirm *Buckley v. Valeo*. Indeed, in view of the conflict between the Eighth Circuit's decision and this Court's specific holding in *Buckley v. Valeo*, the Court may wish to consider summary reversal.

A. Statutory Background

Until 1994, Missouri's campaign finance laws permitted unlimited contributions to candidates for state and local office. During that time, very large contributions were not only permitted, they were made. *See Carver v. Nixon*, 72 F.3d 633, 642 (8th Cir. 1995) (citing $420,000 in contributions from one PAC to several races in one area of the state), *cert. denied*, 518 U.S. 1033 (1996); *see also* (App. 31a) (district court opinion) (citing newspaper stories and editorials about contributions of $40,000 and $20,000).

In July 1994, following hearings and debate, the legislature enacted Senate Bill 650, which included contribution limits of $1,000 per election for statewide candidates, $500 per election for state senators, and $250 per election for state representatives. *See* Mo. Ann. Stat. §§ 130.032.1, 130.032.3 (West 1998); *see also Carver*, 72 F.3d at 645 n.18 (noting deliberative process). The statute also required that the limits be adjusted every two years for inflation. *See* Mo. Ann. Stat. § 130.032.2.

Considering these limits too high, that same year the citizens of Missouri approved an initiative, by an overwhelming 74 percent of the vote, that set contribution limits ranging from $100 to $300 per election cycle. *See Carver v. Nixon,* 72 F 3d at 634. The Eighth Circuit invalidated those limits, reinstating the limits from Senate Bill 650. *Id.* at 633.

Missouri held its 1996 elections, including those for several statewide offices, under the contribution limits at issue in this case. (App. 36a-37a) (district court opinion) (describing ability of candidates to raise money under limits). They were in effect for the 1998 state elections until they were enjoined by the Eighth Circuit on July 23, 1998. (App. 23a). The current limit for statewide candidates, adjusted for inflation, is $1,075. (App. 3a).

B. Proceedings Below

1. *District Court*

Shrink Missouri Government PAC and Zev David Fredman filed this action challenging the constitutionality of Missouri's contribution limits. Following cross-motions for summary judgment filed barely one month after the complaint, the district court entered summary judgment for the state.

In its decision, the district court determined that the state had established its interests in combating corruption or the appearance of corruption. Its determination was based on the affidavit from the state senator who co-chaired the joint legislative committee on campaign finance reform and had spent more than 35 years in the Missouri legislature.[5] (App. 31a). The senator's affidavit detailed that the committee had held hearings, heard "a broad spectrum of opinions," and discussed "at length" the level at which contributions present the potential to become unduly influential. The affidavit explained that it was the "consensus of the committee . . . that the limits set forth in the bill balanced the need to run an effective campaign with the appearance of buying votes."[6] The court noted that the senator viewed contributions in excess of the

---

5. The senator's affidavit provided the only description of the committee's deliberative process because the state does not collect or perserve legislative history. (App. 31a).

6. The affidavit of Senator Goode was submitted in support of the state's summary judgment motion and was included in the joint record on appeal.

limits as having "the appearance of buying votes as well as the real potential to buy votes." (App. 31a) (quoting affidavit). The district court found support for the senator's statements in numerous press accounts from the period in which the contribution limits were enacted (App. 31a), and in the overwhelming public support for Proposition A, which enacted lower contribution limits and passed shortly after the legislature approved the limits here (App. 32a).

The court also rejected Shrink Missouri Government PAC's arguments that the limits were not "narrowly tailored." (App. 35a). Relying on the state's evidence that candidates could raise enough money for campaigns, the court found that the $1,075 limits were not different in kind from *Buckley*'s $1,000 limits, despite the effect of inflation. (App. 37a). Recognizing the variety of factors to be considered in setting contribution limits — from local income to broad inflationary factors (App. 39a-40a) — the court stated, "this analysis illustrates what the *Buckley* Court meant when it said that a judge has 'no scalpel to probe,' whether a $1,000 or $2,000" limit is more appropriate. (App. 41a) (quoting *Buckley*, 424 U.S. at 30).

Noting that Shrink Missouri Government PAC's arguments suggested that *Buckley* was not good law, the court declined to strike Missouri's limits. "[T]o hold that in the context of contribution limits on state elections, the monetary limits approved of in *Buckley* are invalid would, in the Court's view, constitute an indirect — but still improper — overruling of that decision." (App. 39a).

2. *Court of Appeals*

On appeal, a splintered panel of the Eighth Circuit reversed, holding that Missouri's contribution limits ranging up to $1,075 were unconstitutional as matter of law. (App. 9a). The dissent stated that this holding "disregards the inescapable similarity between" Missouri's contribution limits and those upheld in *Buckley* (App. 18a), and stated that "members of the Court quarrel

not only with the contribution limits at issue . . . but with *Buckley* itself," (App. 19a).

The court of appeals held that as a matter of law Missouri failed to show, and, by implication, could not show, that large contributions — those greater than $1,075 for statewide races — gave rise to corruption or the appearance of corruption. (App. 7a). The court of appeals demanded "some demonstrable evidence that there were genuine problems" resulting from contributions larger than the limits, (App. 5a) (citing *Russell v. Burris*, 146 F.3d 563, 568 (8th Cir.), *cert. denied*, 67 U.S.L.W. 3177 (U.S. Nov. 16, 1998) (No. 98-397)), yet rejected the uncontroverted evidence of the public perception of corruption presented to the district court. In the dissent's view: "In rejecting the state's evidence, the Court sidesteps binding Supreme Court precedent." (App. 18a) (Gibson, J., dissenting).

The court also addressed whether the contribution limits were narrowly tailored. Two of the judges on the panel held that the $1,075 limits did not differ in kind from the limits upheld in *Buckley*. (App. 10a) (Ross, J., concurring); (App. 13a) (Gibson, J., dissenting).[7] In contrast, Judge Bowman concluded that the $1,075 limit here was "different in kind" from *Buckley*'s $1,000 limit because under Eighth Circuit precedent inflation had eroded the similarity between the *Buckley*-approved limits and the limits here. (App. 8a-9a).

---

7. Judge Ross joined the dissent in concluding that the limits were not different in kind from those approved in *Buckley*, but sided with the majority to hold that the state had failed to prove its compelling interest of preventing the reality or appearance of corruption.

REASONS FOR GRANTING THE WRIT

I. THE EIGHTH CIRCUIT'S SUMMARY INVALIDATION OF MISSOURI'S CAMPAIGN CONTRIBUTION LIMITS RANGING UP TO $1,075 IS A FLAT REJECTION OF THIS COURT'S DECISION IN *BUCKLEY v. VALEO* APPROVING THE FEDERAL $1,000 LIMITS AND HOLDING THAT COMBATING THE PERCEPTION OF CORRUPTION IS A SUFFICIENT GOVERNMENTAL INTEREST FOR IMPOSING CONTRIBUTION LIMITS.

In *Buckley*, this Court set forth two important governmental interests that will support limits on campaign contributions — (1) combating corruption *and* (2) curtailing the *appearance* of corruption. *See Buckley*, 424 U.S. at 25. Reiterating the difficulty of proving actual corruption, the *Buckley* Court turned again and again to the perception of corruption "inherent in a regime of large individual financial contributions" to uphold the $1,000 limits in FECA. *Id.* at 27; *see, e.g., id.* at 28, 30. The court of appeals, here, however, insisted that absent proof of actual corruption the government has no important interest in limiting campaign contributions. This holding is a direct and insupportable rejection of *Buckley*.

There is no question that this Court recognizes that a government attempt to ameliorate perceived corruption is a compelling interest supporting limits on campaign contributions. In *Buckley*, the Court repeatedly stated that the "primary" interest served by contribution limits was the "prevention of corruption and the *appearance* of corruption spawned by the real or *imagined* coercive influence of large financial contributions." *Id.* at 25 (emphasis added); *see id.* at 28 (contribution limits are necessary "to deal with the reality or appearance of corruption inherent in a system" of large contributions); *see also Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 609 (1996) (plurality) (limits on contributions serve a " 'compelling' government interest in assuring the electoral system's legitimacy, protecting it from the appearance and reality of corruption"). This

recognition of a government interest growing out of an "imagined coercive influence" underscores the Court's conclusion that there is an important interest in maintaining confidence in representative government even in the absence of actual corruption.

After recognizing that actual corruption can be very difficult to prove,[8] the Court stated:

> Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse *inherent* in a regime of large individual financial contributions.

Id. at 27 (emphasis added). The Court did not require that the public know about specific instances of *quid pro quo* corruption in order to create "a perception of corruption" giving rise to a compelling interest in imposing contribution limits. Instead, the Court recognized that the public would *assume* that there was abuse in a system that allows large contributions and that this assumption threatened the integrity of the electoral process even in the absence of proof of actual corruption.

The Eighth Circuit rejects that aspect of *Buckley* by demanding that Missouri produce some "demonstrable evidence" that there were "genuine problems" that resulted from large contributions. (App. 5a) (citing *Russell*, 146 F.3d at 568, 569). Moreover, even under that standard, the court will not allow the state to establish the appearance of corruption. Despite a sworn statement from the state senator who co-chaired the committee on campaign finance reform — in which he described the legislative process that resulted in the limits and the consensus of the committee that contributions

---

8. The Court noted that "the scope of such pernicious practices can never be reliably ascertained" and cited evidence from the 1972 election to state that the "problem is not an illusory one." *Id.* at 27.

in excess of the limits created an appearance of corruption[9]— the Eighth Circuit held that the state had failed to demonstrate a genuine issue of material fact regarding the appearance of corruption.[10] The Court did not even address the overwhelming support that Missouri voters gave to the much lower contribution limits in Proposition A; support which the district court considered evidence of a public perception of a problem. In short — and remarkably — the Eighth Circuit held that uncontroverted testimony from a perennial candidate and long-time state legislator that large contributions created a perception of corruption, evidence of newspaper articles and editorials from around the state reporting on the dangers of large contributions, and an overwhelming public vote in favor of an initiative with even lower contribution limits than those challenged here are not sufficient evidence of a public perception of corruption for the State to survive summary judgment.

In fact, this evidence is no less detailed and weighty than that relied on by the *Buckley* Court when it found in favor of the government on the merits. As the dissent noted below, the Eighth Circuit's treatment of the evidence here cannot be reconciled with *Buckley*, "which cited no actual evidence that large contributions might give rise to the appearance of political corruption and which deferred to what Congress could have reasonably concluded." (App. 17a) (Gibson, J., dissenting) (citing *Buckley*, 424 U.S. at 27, 28, 30).[11]

---

9. The senator's affidavit testimony, along with several newspaper articles discussing large contributions, is cited in the district court opinion. (App. 31a-32a) (district court opinion).

10. The Eighth Circuit demonstrates its hostility to this evidence by weighing and criticizing the affidavit at issue, describing it as "conclusory and self serving . . . There is no way for us to tell whether this single legislator's perception of corruption is the 'public perception' . . ." (App. 7a) (quoting *Russell*, 146 F.3d at 569).

11. Instead, the Eighth Circuit held that it would not "extrapolate" from the evidence of corruption in *Buckley* to infer that Missouri state candidates are corrupt or appear corrupt. *Id.* (App. 6a).

The Eighth Circuit's outright refusal to follow this core holding in *Buckley* throws into question almost every contribution limit in the nation — including the federal limits — and cries out for this Court's attention. Indeed, in light of this direct conflict, the Court may wish to consider summary reversal.

II. THE LOWER COURTS ARE DIVIDED ON HOW TO APPLY *BUCKLEY* IN EVALUATING CONTRIBUTION LIMITS; WITHOUT GUIDANCE, THE VALIDITY OF SCORES OF LONGSTANDING STATE AND LOCAL CONTRIBUTION LIMITS, AND THE 24-YEAR-OLD FEDERAL LIMITS, WILL BE UNCERTAIN, JEOPARDIZING THE STABILITY OF NUMEROUS CAMPAIGN FINANCE REGIMES.

In its narrowest holding, the Eighth Circuit's decision summarily invalidating Missouri's $1,075 campaign contribution limit for statewide offices has created a direct split with the Sixth Circuit's recent decision upholding a $1,000 limit for similar races. *See Kentucky Right to Life*, 108 F.3d at 648. More generally, the Eighth Circuit's approach to applying *Buckley* is at odds with that of other courts. The lower courts have exhibited, and indeed expressed, confusion about how to evaluate which contribution limits are constitutional under *Buckley* and which are not. The decision here is but the latest illustrating the critical need for this Court to clarify the standard for determining when contribution limits are constitutional under the *Buckley* decision. Absent such further guidance, the validity of scores of longstanding state and local contribution limits, and the 24-year-old federal limit, will be uncertain, jeopardizing the stability of numerous campaign finance regimes.

Since the *Buckley* decision, scores of states and localities have enacted basic limits on the dollar amounts of contributions to candidates, many of which hover around the federal $1,000 limits approved in *Buckley*. (App. 42a-44a) (listing the 35 states and many of the localities that have adopted contribution limits). For more than a decade after the *Buckley* decision, limits on individual

contributions to candidates operated unchallenged, undoubtedly due to a presumption, even by their critics, that imposing contribution limits was a constitutional mechanism for achieving campaign finance reform. However, in recent years, constitutional challenges to campaign contribution limits have begun to appear. In large part, the lawsuits have challenged limits on contributions to candidates that were lower than the $1,000 limit upheld in *Buckley*. *See Russell v. Burris*, 146 F.3d 563, 571 (8th Cir. 1998) ($300 and $100 per election), *cert. denied*, 67 U.S.L.W. 3177 (U.S. Nov. 16, 1998) (No. 98-397); *Carver v. Nixon*, 72 F.3d 633, 645 (8th Cir. 1995) ($300 and $100 per election cycle); *California ProLife Council Political Action Comm. v. Scully*, 989 F. Supp. 1282, 1292 (E.D. Cal. 1998) ($100 to $500 per election), *appeal docketed*, No. 98-15308 (9th Cir. Feb. 3, 1998); *National Black Police Ass'n v. District of Columbia Bd. of Elections and Ethics*, 924 F. Supp. 270, 274-75 (D.D.C. 1996) ($50 to $100 per election cycle), *vacated as moot*, 108 F.3d 346 (D.C. Cir. 1997). More recently, challenges have been brought to contribution limits that equal, or, as in this case, exceed *Buckley*'s limits. *See Kentucky Right to Life, Inc.*, 108 F.3d at 648 ($1,000 per cycle); App. 1a (court of appeals decision) ($250 to $1,075 per election). The pattern of these decisions reveals confusion about how to evaluate the constitutionality of contribution limits under *Buckley* with respect to key aspects of the doctrine, including the appropriate standard of review, the establishment of the state's interests, and the circumstances in which it is appropriate for a court to use a "scalpel to probe" the precise dollar amount of a contribution limit. *Buckley*, 424 U.S. at 30. The doctrinal confusion in turn leaves legislators and citizens who are drafting initiatives with inadequate guidance about the type of evidence they need to support contribution limits.

Without question, the Eighth Circuit's decision in this case will spur scores of additional lawsuits challenging contribution limits under which states have long been operating effectively, as well as new challenges to the federal limit. The confusion in the lower courts over how to evaluate such claims will throw the integrity of many states' campaign finance regimes into doubt.

There is an urgent need for this Court to clarify *Buckley* in order to provide cities, states, and the federal government with coherent rules to structure their electoral processes.

A. The Circuits Are Split on the Appropriate Standard of Review for Evaluating First Amendment Challenges to Contribution Limits.

Buckley does not provide lower courts with adequate guidance as to the appropriate standard of review for evaluating First Amendment challenges to contribution ceilings. The split among the Eighth, Ninth, and Sixth circuits is a clear indication that this Court should revisit and clarify this standard.

The *Buckley* Court's review of contribution limits begins with the observation that such limits impose "only a marginal restriction upon the contributor's ability engage in free communication," *Buckley*, 424 U.S. at 20, and continues with the holding that the $1,000 limits at issue there "do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues," *id.* at 29. After discussing the government's interest in fighting corruption and the limits' precise focus on that interest, the Court holds that under the "rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms" caused by the contribution limits. *Id.*

Then-Justice Rehnquist has since stated:

> The Court in *Buckley v. Valeo*, never suggested that the interest served by the campaign limitation provision was a "compelling" one, nor examined the provision to determine whether it was sufficiently tailored to the interest to survive "heightened scrutiny." The Court was satisfied that the provision had only an indirect and minimal effect on First Amendment interests, as well as a *rational basis*.

Pacific Gas & Elec. Co. v. Public Util. Comm'n, 475 U.S. 1, 29 n.2 (1986) (Rehnquist, J. dissenting) (emphasis added). In *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981) ("*CalMed*"), members of the Court disagreed about whether *Buckley* applied a different, and lower, standard of scrutiny to contribution limits than to spending limits. *Compare CalMed*, 453 U.S. at 196 (plurality opinion) (stating that "speech by proxy," such as by contributions, is not "entitled to full First Amendment protection"), *with CalMed*, 453 U.S. at 202 (Blackmun, J., concurring) (disagreeing with the plurality's suggestion that contribution limits receive a level of scrutiny less than "rigorous"). In *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-60 (1986), the Court stated, "[w]e have consistently held that restrictions on [direct] contributions require less compelling justification than restrictions on" spending.

The court of appeals here insisted that strict scrutiny was the appropriate standard of review for contribution limits and demanded that the state "demonstrate . . . that it has a *compelling interest* and that the contribution limits at issue are *narrowly drawn* to serve that interest." (App. 5a) (citing *Buckley*, 424 U.S. at 25, *Russell*, 146 F.3d at 567; *Carver*, 72 F.3d at 638).

The two other circuits to reach this issue, however, have declined to apply strict scrutiny. The Ninth Circuit has stated explicitly that "while contribution limitations are reviewed under a rigorous level of scrutiny, they are not reviewed under strict scrutiny." *Vannatta v. Keisling*, 151 F.3d 1215, 1220 (9th Cir. 1998) (adopting portion of concurring opinion as unanimous opinion of the panel) (internal quotations omitted), *petition for cert. filed*, 67 U.S.L.W. 3348 (U.S. Nov. 10, 1998) (No. 98-775); *see Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312, 1322 (9th Cir. 1992). Similarly, the Sixth Circuit recently applied an unarticulated intermediate level of scrutiny to Kentucky's $1,000 individual contribution limits; the Court neither closely scrutinized those limits nor the government's

purposes in adopting them. *See Kentucky Right to Life,* 108 F.3d at 646, 648.

The lower courts disagree as to whether to apply strict scrutiny, some form of intermediate scrutiny, or a w. ghing test when they review contribution limits. That disagreement, and the lack of clarity in *Buckley* that spawned it, leaves courts without basic operating instructions in this crucial area. Accordingly, this Court should grant certiorari to clarify the proper standard of review for contribution ceilings.

B. The Lower Courts Are Divided on How a State May Establish Its Interests in Combating the Appearance and Reality of Corruption.

It is uncontroversial that a state's interest in combating the reality and appearance of corruption supports the capping of campaign contributions. *See Buckley*, 424 U.S. at 26-28; *Colorado Republican*, 518 U.S. at 609. Although *Buckley* sets a low threshold for establishing that interest, the lower courts have not consistently followed *Buckley*. Some courts have treated the state's interest as virtually established as a matter of law; others have required historical proof of actual corruption caused by large campaign contributions. This division demonstrates that *Buckley* has not provided sufficient guidance to lower courts adjudicating challenges to campaign contribution limits. Without such guidance, states within the Eighth Circuit will be barred from using a standard tool of campaign finance regulation — limits on contributions to candidates.

In *Buckley*, the Court suggested that the threshold for demonstrating the need to limit actual corruption is quite low; indeed, because "the scope of such pernicious practices can never be reliably ascertained," the state need show only that the problem of actual corruption is not "illusory." *Buckley*, 424 U.S. at 27. The *Buckley* Court then concluded that anecdotal evidence of large contributions made during the 1972 elections sufficiently demonstrated that the asserted problem of corruption in the federal government was not "illusory." *Id.* at 27 & n.28.

Similarly, the *Buckley* Court found that the government could show that an appearance of corruption exists even when the "coercive influence of large financial contributions on candidates' positions and on their actions if elected to office" has no basis in reality, but is only "imagined." *Id.* at 25. Because one of *Buckley*'s core assumptions is that the appearance of impropriety is "*inherent* in a regime of large individual contributions," *id.* at 27 (emphasis added), *Buckley* suggests that a low threshold of proof is required to show a government interest in combating the appearance of corruption. *See id.*; *see also Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990) (state had sufficiently demonstrated a danger of real or apparent corruption caused by corporate political expenditures because "[c]orporate wealth *can* unfairly influence elections") (emphasis added). The *Buckley* Court cited no specific evidence of the appearance of corruption in the federal system but relied on a presumed public awareness of the opportunities for abuse. *See Buckley*, 424 U.S. at 27.

The Eighth Circuit's decision here, however, has taken *Buckley*'s low and deferential threshold and twisted it into a requirement that the state prove that there is a "real problem with corruption or a perception thereof as a direct result of large campaign contributions." (App. 6a). Thus, the Eighth Circuit held that uncontroverted evidence that the legislature believed that large contributions "create both the appearance that contributors could purchase the votes of elected officials and the danger of actual vote-buying" was not sufficient to allow the state to survive summary judgment. (App. 15a) (Gibson, J. dissenting). Furthermore, evidence that the public overwhelmingly supported an initiative that enacted limits even lower than those at issue, and newspaper articles and editorials describing the pernicious effects of large contributions, were all insufficient to defeat Shrink Missouri Government PAC's motion for summary judgment. *Compare* App. 6a-7a (court of appeals opinion) (failing to address the district court's reliance on such evidence), *with* App. 31a-32a & nn. 6-7 (district court opinion) (relying on such evidence), As the dissent noted, even the evidence found sufficient in *Buckley* could not survive under the Eighth Circuit's standards. (App. 10a)

(Gibson, J., dissenting) (*Buckley* affirmed the FECA limits "[u]pon a record more slender than the one before us").

In *Russell v. Burris*, the Eighth Circuit first applied their impossibly stringent standard of proof for establishing the requisite appearance of corruption. 146 F.3d at 569-70. The court of appeals described its standard as one of objective reasonableness, *see id.* at 569, but, in application, the court required proof of actual bribery or extortion in order to support any claim of apparent corruption, *see id.* at 570. In striking Arkansas' contribution limits, the court of appeals repeatedly complained of the government's failure to show actual *quid pro quo* corruption or other illegality, although it acknowledged the evidence that "there was a 'uniform' public perception of corruption associated" with one bill, *id.* at 569, and that one lawmaker received substantial contributions from lobbyists who had business before his committee, *id.* at 569-70. The court of appeals effectively held that a perception of corruption is reasonable only when it is based on actual *quid pro quo* exchanges of money or other clearly unlawful conduct. As the decisions here and in *Russell* demonstrate, the Eighth Circuit's standard makes it virtually impossible for a state to prove that it has a sufficient interest in combating the appearance of corruption to justify contribution limits.

At the other end of the spectrum, the Sixth Circuit appears to accept as a matter of law that states have established an interest in addressing the appearance and reality of corruption even in the absence of any specific evidence to that effect. *See Kentucky Right to Life*, 108 F.3d at 646-48 (noting at the outset of opinion that "[n]umerous Kentucky public officials have been convicted of abusing their political offices for personal gain over the past twenty-five years" but not reviewing any specific evidence of the appearance or reality of corruption relating to large contributions); *see also Montana Right to Life Ass'n v. Eddleman*, 999 F. Supp. 1380, 1386 (D. Mont. 1998) (denying summary judgment to plaintiffs without addressing government's proof of corruption).

A handful of courts take an intermediate approach, requiring that the state come forward with some indeterminate quantum of anecdotal evidence of, at the very least, the public's perception that large campaign contributions are unduly influencing officeholders. For instance, a district court in California considering a challenge to a 1996 initiative imposing contribution limits held that evidence of several bribery convictions and a government investigation of the state legislature indicated that the problem of corruption was "not illusory." *California ProLife Council PAC*, 989 F. Supp. at 1294-95. The California district court also held, as did the district court here, that the "persistence of the . . . electorate" in approving referenda imposing contribution limits "appears to demonstrate a wide-spread" perception of corruption in the state sufficient to establish the government's interest in limiting contributions even for offices where there was no evidence of corruption. *Id.* at 1295; *see also* App. 32a n.7.

In most areas involving the regulation of campaigns and elections, the Court does not "require elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons v. Twin Cities Area New Party*, 117 S. Ct. 1364, 1372 (1997) (citing *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986)); *see United States v. National Treasury Employees Union*, 513 U.S. 454, 473 (1995) (upholding ban on honoraria given to high-level federal officials because Congress "reasonably could assume" that honoraria to higher ranking officials could appear improper).[12] For instance, when considering ballot access requirements, the Court has not required the government to make a particularized showing of its interests. The Court has explained:

> To require States to prove actual voter confusion, ballot overcrowding, or the presence of frivolous

---

12. Notably, Chief Justice Rehnquist would have deferred to the government's determination that the appearance of impropriety required a ban on honoraria for all employees. *National Treasury Employees Union*, 513 U.S. at 494 (Rehnquist, C.J., dissenting).

> candidacies as a predicate to the imposition of reasonable ballot access restrictions would invariably lead to endless court battles over the sufficiency of the evidence marshaled by a State to prove the predicate. Such a requirement would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action.

Munro, 479 U.S. at 195-96 (internal quotations omitted).

In *Buckley* and its progeny, this Court has similarly suggested that it does not require elaborate, empirical verification of the state's interest in combating the appearance of corruption from large contributions. *See Buckley*, 424 U.S. at 28-30; *FEC v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982) ("Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared."). The Eighth Circuit, however, has already traveled far down that path, opening the door to "endless court battles over the sufficiency of the evidence marshaled by a State to prove [its interest]." *Munro*, 479 U.S. at 195 (internal quotations omitted). If this Court intends for the state's interest to be governed by a different standard in regulating campaign contributions than in other areas of election regulation, it should make that standard clear. Otherwise, it should confirm that elaborate, empirical proof is not required in this area as well.

C. Lower Courts Are Divided on How to Determine When Contribution Limits Are "Different in Kind" from the $1,000 Limits Upheld in *Buckley*.

In *Buckley*, having determined that the federal $1,000 contribution limits had only a "limited effect" on First Amendment rights and advanced the government's "weighty interests" in combating the actuality and potential for corruption, 424 U.S. at 29, the Court refused to scrutinize the precise dollar amount of a contribution limit to determine whether a higher limit may have

been equally effective in advancing the government's interest. Indeed, the Court explicitly admonished that such scrutiny is inappropriate, explaining that if a court "is satisfied that some limit on contributions is necessary, [it] has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." *Id.* at 30 (internal citation and quotations omitted).[13] However, in the very next sentence, the Court opened the door to such scrutiny, stating that "[s]uch distinctions in degree become significant only when they can be said to amount to differences in kind." *Id.* The Court did not elaborate on its meaning, except to offer citations comparing two cases involving registration deadlines for switching political party affiliations, *Kusper v. Pontikes*, 414 U.S. 51 (1973) (striking 23-month requirement), and *Rosario v. Rockefeller*, 410 U.S. 752 (1973) (upholding 11-month requirement). *See Buckley*, 424 U.S. at 30.

The lower courts have divided on the standard for when they must take a "scalpel to probe," *id.* at 30, the precise level of a contribution limit because it is "different in kind," *id.*, from the $1,000 limit approved in *Buckley*.

- *A Flat Numerical Comparison*: The Sixth Circuit has applied a test of flat numerical comparison, holding that Kentucky's $1,000 election year limit on campaign contributions "is not different in kind" from the $1,000 per election limit approved in *Buckley* because the two limits are "nearly identical." *See Kentucky Right to Life*, 108 F.3d at 648.

- *An Inflation-Adjusted Numerical Comparison*: The Eighth Circuit has applied an inflation-adjusted numerical comparison that uses as its constitutional benchmark not

13. Thus, according to *Buckley*, a court may not scrutinize the level of contribution limits or invalidate them, because some, indeed most, contributors who wished to contribute above the contribution limits did not seek to improperly influence officeholders, or because $1,000 is too low to corrupt candidates for statewide and national office. *Id.* at 29-31.

FECA's current $1,000 limit, but the present value of $1,000 in 1976, which is approximately $2,500. *E.g.*, *Russell*, 146 F.3d at 570-71 (using inflation adjustment to find contribution limits "different in kind"); *Carver*, 72 F.3d at 641-42 (same); *Day v. Holahan*, 34 F.3d 1356, 1366 (8th Cir. 1994) (same); *see generally* Craig M. Engle, *et al.*, *Buckley Over Time: A New Problem with Old Contribution Limits*, 24 J. Legis. 207, 211-19 (1998) (arguing that the diminished value of $1,000 after two decades amounts to a difference in kind).

- *A Functional Approach*: Other courts have analyzed a difference in kind as unrelated to any numerical comparison to the $1,000 limit in *Buckley* and rather applied a functional approach that asks whether the effect of the challenged law is to severely burden constitutionally protected activity. *See California ProLife Council PAC*, 989 F. Supp. at 1298 (finding a difference in kind only after finding that California's limits will "make it *impossible* for the ordinary candidate to mount an effective campaign for office") (emphasis added); *Russell v. Burris*, 978 F. Supp. 1211, 1223 (E.D. Ark. 1997) (finding persuasive argument that "contribution limits amount to a difference in kind, when compared to the limits upheld in *Buckley*, because the limits do not permit the same quality of political expression and association that the FECA limits allowed"), *rev'd on other grounds*, 146 F.3d 563 (8th Cir.), *cert. denied*, 67 U.S.L.W. 3177 (U.S. Nov. 16, 1998) (No. 98-397); *see also* William J. Connolly, Note, *How Low Can You Go? State Campaign Contribution Limits and the First Amendment*, 76 B.U. L Rev. 483, 531 (1996) ("Differences in degree may take on constitutional dimension and become differences in kind, but the distinction should not rest on mathematical comparison alone.").

The lower courts' division over how to evaluate whether contribution limits are "different in kind" from the $1,000 limits

approved in *Buckley* is hardly academic. Like the standard of scrutiny to be applied, the test for determining when a campaign contribution limit is "different in kind" often determines whether the limit stands or falls. *Compare Russell v. Burris*, 978 F. Supp at 1225 (applying functional approach and upholding $200 limit on contributions to PACs because in its six years in effect "the $200 limit has not prevented 'political committees from amassing the resources necessary for effective advocacy'"), *with Russell v. Burris*, 146 F.3d at 571 (applying inflation-adjusted numerical comparison and invalidating $200 PAC contribution limit without addressing the district court's finding).

Without guidance, lower courts will continue to take inconsistent approaches, and reach inconsistent results, in First Amendment challenges to contribution limits. It is particularly critical for the Court to address the issue now, before this case sets off a torrent of challenges to the $1,000 federal limits still in effect. In response to such a challenge, a court taking the "flat numerical approach" would clearly uphold any $1,000 limit; a court taking an "inflation-adjusted numerical approach" would strike the federal limits; a court taking a functional approach would be likely to uphold the limit, based on the continued ability of candidates in federal races to raise sufficient funds for effective advocacy.[14]

---

14. Indeed, the division on the Eighth Circuit panel in this case demonstrates that how the "difference in kind" test is applied determines the outcome. In a portion of his opinion not joined by the other judges on the panel, Chief Judge Bowman argued that Missouri's limits were "different in kind" from those in *Buckley*, applying the inflation-adjustment numerical approach. (App. 8a) ("After inflation, limits of $1075, $525, and $275 cannot compare with the $1,000 limit approved in *Buckley* twenty-two years ago."). In his dissenting opinion, Judge Gibson argued that the limits were not different in kind, employing the flat numerical approach: "When we compare the $1075 contribution limit . . . for each election with the $1,000 upheld by *Buckley*, there is simply no difference in kind." (App. 11a) (Gibson J., dissenting); *see also* App. 12a (noting that even Missouri's $525 and $275 "compare favorably" with *Buckley*'s $1,000 limit because they apply to races in districts smaller that Congressional districts).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted. Additionally, in view of deep conflict between the court of appeals' decision and this Court's decision in *Buckley v. Valeo*, the Court may with to consider summary reversal.

Respectfully submitted,

BURT NEUBORNE
Counsel of Record
NANCY NORTHUP
ELIZABETH DANIEL
BRENNAN CENTER FOR JUSTICE
at New York University School of Law
Attorneys for Petitioner
161 Avenue of the Americas, Fifth Floor
New York, New York 10013
(212) 998-6730

APPENDIX

APPENDIX

Petitioner Bray adopts by reference and with permission the Appendix contained in the Petition for Writ of Certiorari filed by petitioners Jeremiah W.(Jay) Nixon, Richard Adams, Patricia Flood, Robert Gardner, Donald Gann, Michael Greenwell, Elaine Spielbusch, and Robert McCulloch. *See Nixon v. Shrink Missouri Government PAC,* Petition for Cert. (filed December 14, 1998).